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FEET TRANSMITTAL for FY 2002

Patent fees are subject to annual revision.

AMOUNT OF PAYMENT (\$ 160)

Complete if Known	
Application Number	09/598,110
Filing Date	June 21, 2000
First Named Inventor	Pullaro
Examiner Name	A. Hunter
Group / Art Unit	3711
Attorney Docket No.	6787-000002

COPY OF PAPER
ORIGINALLY FILED
BY MAIL

METHOD OF PAYMENT (check one)

1. The Commissioner is hereby authorized to charge indicated fees and credit any over payments to:

Deposit Account Number: 08-0750

Deposit Account Name: Harness, Dickey & Pierce, P.L.C.

Charge Any Additional Fee Required Under 37 CFR 1.16 and 1.17

Applicant claims small entity status. See 37 CFR 1.27

2. Payment Enclosed:
 Check Credit card Money Order Other

FEE CALCULATION

1. BASIC FILING FEE

Large Entity Fee Code	Fee (\$)	Small Entity Fee Code	Fee (\$)	Fee Description	Fee Paid
101	740	201	370	Utility filing fee	
106	330	206	165	Design filing fee	
107	510	207	255	Plant filing fee	
108	740	208	370	Reissue filing fee	
114	160	214	80	Provisional filing fee	

SUBTOTAL (1) (\$ 0)

2. EXTRA CLAIM FEES

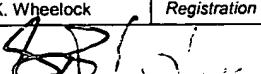
Total Claims	Independent Claims	Multiple Dependent	Extra Claims	Fee from below	Fee Paid
			0		0
			0		0
					0

Large Entity Fee Code	Fee (\$)	Small Entity Fee Code	Fee (\$)	Fee Description	Fee Paid
103	18	203	9	Claims in excess of 20	
102	84	202	42	Independent claims in excess of 3	
104	280	204	140	Multiple dependent claim, if not paid	
109	84	209	42	** Reissue independent claims over original patent	
110	18	210	9	** Reissue claims in excess of 20 and over original patent	

SUBTOTAL (2) (\$ 0)

**or number previously paid, if greater; For Reissues, see above

3. ADDITIONAL FEES					
Large Entity	Small Entity	Fee Description	Fee Paid		
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
105	130	205	65	Surcharge - late filing fee or oath	
127	50	227	25	Surcharge - late provisional filing fee or cover sheet	
139	130	139	130	Non-English specification	
147	2,520	147	2,520	For filing a request for reexamination	
112	920*	112	920*	Requesting publication of SIR prior to Examiner action	
113	1,840*	113	1,840*	Requesting publication of SIR after Examiner action	
115	110	215	55	Extension for reply within first month	
116	400	216	200	Extension for reply within second month	
117	920	217	460	Extension for reply within third month	
118	1,440	218	720	Extension for reply within fourth month	
128	1,960	228	980	Extension for reply within fifth month	
119	320	219	160	Notice of Appeal	
120	320	220	160	Filing a brief in support of an appeal	160
121	280	221	140	Request for oral hearing	
138	1,510	138	1,510	Petition to institute a public use proceeding	
140	110	240	55	Petition to revive - unavoidable	
141	1,280	241	640	Petition to revive - unintentional	
142	1,280	242	640	Utility issue fee (or reissue)	
143	460	243	230	Design issue fee	
144	620	244	310	Plant issue fee	
122	130	122	130	Petitions to the Commissioner	
123	50	123	50	Processing fee under 37 CFR 1.17 (q)	
126	180	126	180	Submission of Information Disclosure Stmt	
581	40	581	40	Recording each patent assignment per property (times number of properties)	
146	740	246	370	Filing a submission after final rejection (37 CFR § 1.129(a))	
149	740	249	370	For each additional invention to be examined (37 CFR § 1.129(b))	
179	740	279	370	Request for Continued Examination (RCE)	
169	900	169	900	Request for expedited examination of a design application	
Other fee (specify) _____					
*Reduced by Basic Filing Fee Paid				SUBTOTAL (3) (\$ 160)	

SUBMITTED BY		Complete if applicable	
Name (Print/Type)	Bryan K. Wheelock	Registration No. Attorney/Agent	31,441
Signature		Telephone	314-726-7500
		Date	January 28, 2002

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#11
Appeal Brief
5 Zimmerman
3-5-02.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of: Pullaro, Terry J.

Serial No.: 09/598,110

Filed: June 21, 2000

For: Sports Training and Conditioning Device

Examiner: Alvin A. Hunter

Group Art Unit: 3711

Commissioner for Patents
Washington, D.C. 20321

APPLICANTS' BRIEF ON APPEAL

Pursuant to 37 C.F.R. § 1.192, Applicant submits its Brief on Appeal, as follows:

Real Party in Interest (37 C.F.R. § 1.192 (c)(1))

The real party in interest in this appeal is Terry J. Pullaro, a citizen of the State of Missouri.

Related Appeals and Interferences (37 C.F.R. §1.192(c)(2))

There are no other appeals or interferences known to Applicants, or to Applicants' legal representatives or assignees, which will directly affect, or would be directly affected by, or have a bearing on, the Board's decision in this appeal.

Status of the Claims (37 C.F.R. §1.192(c)(3))

Claims 2 – 17 are pending in the application.; these claims stand rejected in view of the Final Office Action of August 28, 2001.

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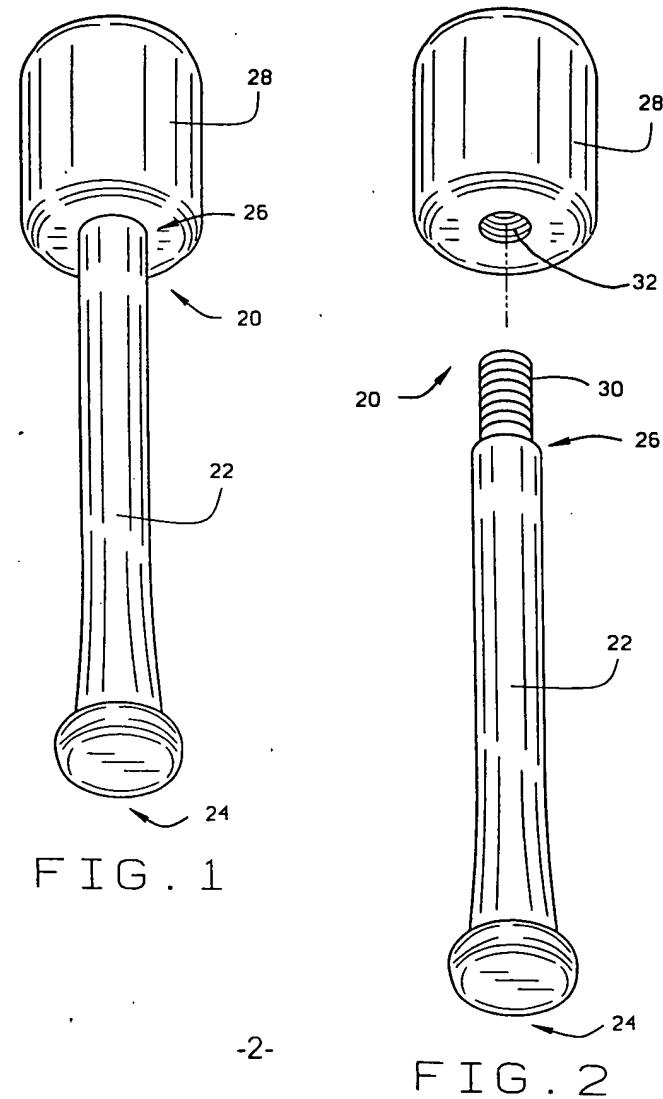
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Status of Amendments (37 C.F.R. §1.192(c)(4))

No amendments were filed after the final rejection of August 28, 2001.

Summary of Invention (37 C.F.R. §1.192(c)(5))

The invention relates to a sports training and conditioning device adaptable to virtually any sport that uses a hand held implement, including baseball, golf, tennis, squash, badminton, hockey, lacrosse, et cetera. The sports training and conditioning device of the present invention comprises a handle (22) shaped like the grip portion of the implement for the particular sport, for example a baseball bat, having a first and second ends (24, 26). A weight (28) is mounted on the second end (26) such that the center of mass is less than about 13 inches from the first end (24). Figs 1 and 2 illustrate the embodiment of the invention adapted for batting sports:



This positioning of the center of mass so close to the hands defies conventional wisdom of placing a weight on the end of a sports implement. The inventor has found that for most sports, this focuses the effect of the device on the user's forearms, and reduces the stress and strain on other parts of the body. The user simply grasps the device as the user would normally grasp the sports implement, and swings the device in a controlled manner just as the user would swing the implement.

Issues (37 C.F.R. §1.192(c)(6))

Would the device as set forth in claims 2 through 17 have been obvious under 35 U.S.C. §103(a) from Fazio, U.S. Patent No. 4,982,963, in view of Wendt, U.S. Patent No. 4,444,396, and Official Notice?

Grouping of Claims (37 C.F.R. §1.192(c)(7))

The claims do not stand together. The following claims or groups of claims are separately patentable: Claims 2 and 12; claim 3; claim 4; claim 5; claim 6; claims 7 and 8; claim 9; claims 10-11; claim 13; claim 14; claim 16; and claim 17.

Argument (37 C.F.R. §1.192(c)(8))

THE DEVICE SET FORTH IN CLAIMS 2 THROUGH 14
WOULD NOT HAVE BEEN OBVIOUS UNDER 35 U.S.C. §103(a)
FROM FAZIO, U.S. PATENT NO. 4,982,963, IN VIEW OF WENDT,
U.S. PATENT NO. 4,444,396, AND OFFICIAL NOTICE

Claim 2, and thus claims 3 through 14 which depend directly or indirectly from claim 2, requires:

A sport specific training and conditioning device for a sport using a handheld implement having a grip portion, the device comprising a handle shaped like the grip portion of the implement, the handle having first and second ends, and a weight on the second end of the handle, the center of mass of the device being less than about 13 inches from the first end of the handle.

In contrast to sports tradition and common experience, rather than putting the weight at the end of a sports implement (like the traditional doughnut on a baseball bat),

applicant has concentrated the weight very close (within about 13 inches) from the proximal end of the handle. This unique placement means that the effect of the device is focused on the user's forearms, and not distributed to the shoulder and other parts of the body. This unique positioning of a weight on a handle shaped like a conventional sports implement, is not shown or suggested by Fazio, U.S. Patent No. 4,982,963, (hereinafter "Fazio") or Wendt, U.S. Patent No. 4,444,396 (hereinafter "Wendt"), or any obvious combination of Fazio or Wendt.

Fazio discloses a golf club swing training device. According to the Office Action (page 2, paragraph 1) "The grip member is the equivalent of that of the graspable portion on a golf club and makes the device capable of having the grip member (20) at any distance from the head member (40)." While it may theoretically be possible to move the grip member (20) very close to the weight in Fazio, this is not shown or suggested in Fazio and is clearly CONTRARY to the teaching of Fazio. First, Fazio clearly explains that the grip member (20) is to be moved to various positions where it accurately simulates the distance between the grip and head for a real golf club. See, column 3, lines 40 – 54. It would be against the teachings of Fazio to move the grip any closer than the distance between the grip and head of the shortest golf club. Applicant is not aware of any 13" golf clubs, and the Office has not provided any such reference. Furthermore, however, it would be impossible for the user to move the grip member (20) in Fazio to within 13" of the weight because the shaft would project so far out of the proximal end of the handle that it would impale the user, and certainly would not permit a user to swing the device. Thus, it is against the express teaching of Fazio and physically impossible to modify the Fazio device as proposed in the Office Action, and this is certainly something that would not be obvious to a person of ordinary skill in the art.

Wendt discloses a weighted golf swing exercise club, however, applicant finds no indication that the center of mass is within thirteen inches of the proximal end of the handle, and the Office Action does not indicate any such teaching in Wendt. Instead, Fazio and Wendt appear to be conventional devices in which the weight concentrated at

the distal end of the device far from the user's hands, and certain much farther than the maximum 13" required by claims 2 through 14.

Claim 3 requires that the center of mass of the device "is less than about 13 inches from the first end of the handle, but past the graspable portion of the handle". This is not shown or suggested in Fazio and/or Wendt, which teach a weight much further from the end of the handle. Even in the Office Action's unobvious abuse of the Fazio, it is not apparent that the center of mass would still be "past the graspable portion of the handle" as required by claim 3.

Claim 4 requires that the "weight has a diameter of less than about 4 inches". The Office Action incorrectly suggests that this is an obvious offshoot have having the center of mass within thirteen inches of the end of the device. However, as discussed above, it is not obvious to have the weight in a sports training and conditioning device within thirteen inches of the end of the device. Moreover, there are numerous ways to accomplish this, and nothing to suggest applicant's claimed way to accomplish this. Finally, the swing properties of the device are affected by the length and diameter of the weight, and nothing teaches the particular swing properties designed by applicant and achieved by keeping the weight diameter "less than about 4 inches" as claimed in claim 4.

Claim 5 requires that the "weight has a length of less than about 4 inches". The Office Action incorrectly suggests that this is an obvious offshoot have having the center of mass within thirteen inches of the end of the device. However, as discussed above, it is not obvious to have the weight in a sports training and conditioning device within thirteen inches of the end of the device. Moreover, there are numerous ways to accomplish this, and nothing to suggest applicant's claimed way to accomplish this. Finally, the swing properties of the device are affected by the length and diameter of the weight, and nothing teaches the particular swing properties designed by applicant and achieved by keeping the weight length "less than about 4 inches" as claimed in claim 5.

Claim 6 requires that the device "weighs more than the hand held implement used in the sport". Fazio and/or Wendt do not teach making a device that weighs more than a conventional sports implement, and putting the center of mass of this "heavy" device within 13" of the end of the device.

Claims 7 and 8 requires that "one of the handle and weight includes an externally threaded portion, and wherein the other of the handle and weight includes an internally threaded socket". The Office Action concedes that this structure is not shown or suggested in Fazio, but incorrectly asserts that it is shown in Wendt. While Wendt does show a cylinder 60 threadedly connected to and forming a part of the shaft 14, and does not show weights threadedly connected to the handle. Claim 8 further requires that "the handle includes an externally threaded portion and the weight includes an internally threaded socket". As discussed above, neither Fazio nor Wendt show weights with threaded sockets.

Claim 9 requires that "the handle is shaped like the grip portion of a bat". This is not shown or suggested in Fazio and Wendt, which disclose golf devices. Even if, for some reason, Fazio and Wendt would be found to make obvious a golf training and conditioning device with a center of mass 13 inches from the end of the handle, they do not teach or suggest a batting device, and there is nothing to suggest that what would be beneficial for a golf swing would also be beneficial for a batting swing.

Claims 10 and 11 require that "the handle is shaped like the grip portion of a racket". This is not shown or suggested in Fazio and Wendt, which disclose golf devices. Even if, for some reason, Fazio and Wendt would be found to make obvious a golf training and conditioning device with a center of mass 13 inches from the end of the handle, they do not teach or suggest a racket device, and there is nothing to suggest that what would be beneficial for a golf swing would also be beneficial for a racket swing. Claim 11 further requires that the grip is shaped like the grip portion of a tennis racket. This is not shown or suggested in Fazio and Wendt.

Claim 13 requires that "the handle is shaped like the grip portion of a hockey stick". This is not shown or suggested Fazio and Wendt, which disclose golf devices. Even if, for some reason, Fazio and Wendt would be found to make obvious a golf training and conditioning device with a center of mass 13 inches from the end of the handle, they do not teach or suggest a hockey device, and there is nothing to suggest that what would be beneficial for a golf swing would also be beneficial for a hockey swing.

Claim 14 requires that "the handle is less than about 10 inches long". As discussed above neither Fazio nor Wendt teach or suggest a handle of 13 inches, let alone a handle of 10 inches as required by claim 14.

For at least these reasons, applicant respectfully submits that applicant's invention as set forth in claims 2 through 14 would not have been obvious from Fazio, U.S. Patent No. 4,982,963, In View Of Wendt, U.S. Patent No. 4,444,396.

**THE DEVICE SET FORTH IN CLAIMS 15 AND 16
WOULD NOT HAVE BEEN OBVIOUS UNDER 35 U.S.C. §103(a)
FROM FAZIO, U.S. PATENT NO. 4,982,963, IN VIEW OF WENDT,
U.S. PATENT NO. 4,444,396, AND OFFICIAL NOTICE**

Claims 15 and 16 require:

15. A sport specific training and conditioning device for a sport using a handheld implement having a grip portion, the device comprising a handle shaped like the grip portion of the implement, the handle having first and second ends and being less than about 10 inches long, and a weight on the second end of the handle, the center of mass of the weight being less than about 13 inches from the first end of the handle.

Neither Fazio and Wendt teach or suggest a sport specific training and conditioning device with a handle having first and second ends and being less than about 10 inches long, and a weight on the second end of the handle, the center of mass of the weight being less than about 13 inches from the first end of the handle.

As discussed extensively above, Fazio and Wendt do not teach or suggest a sport specific training and conditioning in which the center of mass is less than about 13 inches, let alone such a device in which the handle is less than about 10 inches.

Claim 16 further requires a sport specific training and conditioning device wherein the center of mass of the device is not located on the handle.

For at least these reasons, applicant respectfully submits that applicant's invention as set forth in claims 15 and 16 would not have been obvious from Fazio, U.S. Patent No. 4,982,963, In View Of Wendt, U.S. Patent No. 4,444,396.

THE METHOD SET FORTH IN CLAIM 17
WOULD NOT HAVE BEEN OBVIOUS UNDER 35 U.S.C. §103(a)
FROM FAZIO, U.S. PATENT NO. 4,982,963, IN VIEW OF WENDT,
U.S. PATENT NO. 4,444,396, AND OFFICIAL NOTICE

Claim 17 is directed to a method of training and conditioning for a sport that uses a hand-held implement having a grip portion. Claim 17 requires gripping a device comprising a handle shaped like the grip portion of the implement, the handle having first and second ends, and a weight on the second end of the handle, the center of mass of the device being less than about 13 inches from the first end of the handle, and swinging the device to train and condition the arms. Neither Fazio and Wendt teach or disclose gripping a handle shaped like the grip portion of a sports implement in which the center of mass of the device is less than about 13 inches from the end of the handle. As discussed above with respect to claim 2, Fazio does not teach such a device. Even if the grip portion is moved close to the weight, the end of the device is still considerable more than 13 inches from the center of mass, and would interfere with swinging the device. Wendt does not teach or suggest using a device with the center of mass so close to the end of the device. Lacking any teaching of the device, Fazio and/or Wendt cannot make the claimed method obvious.

For at least this reason, applicant respectfully submits that the rejection of claim 17 should be reversed.

CONCLUSION

Applicant has invented a sports training and conditioning device which emulates the hand held implement used in a particular sport, such as a club, bat, racket, or stick, and contrary to conventional wisdom represented by Fazio and Wendt in which the weight is disposed far away from the grip, positioned the weight so that it is no more than about 13 inches from the end of the device. This means that no matter where the user grips the device, the weight is still so close the user's hands that the weight is supported by the forearms as the user swings the device. This is not shown or suggested in the prior art, and for this reason, applicant respectfully submits that the rejection of claims 2 through 17 should be reversed.

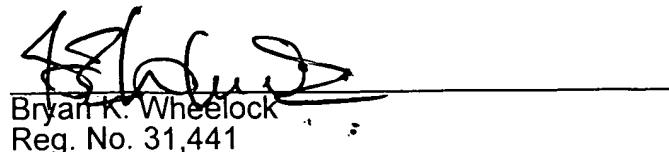
Respectfully submitted,



Bryan K. Wheelock, Reg. No. 31,441
Harness, Dickey & Pierce, P.L.C.
7700 Bonhomme Avenue, Suite 400
St. Louis, MO 63105
(314) 726-7500

CERTIFICATE OF MAILING

I certify that on January 28, 2002, APPLICANTS' BRIEF ON APPEAL (in triplicate) was sent by first mail to the U.S. Patent and Trademark Office, address to Commissioner for Patents, U.S. Patent and Trademark Office, Washington, D.C. 20231.



Bryan K. Wheelock
Reg. No. 31,441

APPENDIX 1
(CLAIMS ON APPEAL)

2. A sport specific training and conditioning device for a sport using a handheld implement having a grip portion, the device comprising a handle shaped like the grip portion of the implement, the handle having first and second ends, and a weight on the second end of the handle, the center of mass of the device being less than about 13 inches from the first end of the handle.

3. The sport specific training and conditioning device according to claim 2 wherein the center of mass of the device is less than about 13 inches from the first end of the handle, but past the graspable portion of the handle.

4. The sport specific training and conditioning device according to claim 2 wherein the weight has a diameter of less than about 4 inches.

5. The sport specific training and conditioning device according to claim 2 wherein the weight has a length of less than about 4 inches.

6. The sport specific training and conditioning device according to claim 2 wherein the device weighs more than the hand held implement used in the sport.

7. The sport specific training and conditioning device according to claim 2 wherein one of the handle and weight includes an externally threaded portion, and wherein the other of the handle and weight includes an internally threaded socket.

8. The sport-specific training and conditioning device according to claim 7 wherein the handle includes an externally threaded portion and the weight includes an internally threaded socket.

9. The sport specific training and conditioning device according to claim 2 wherein the handle is shaped like the grip portion of a bat.

10. The sport specific training and conditioning device according to claim 2 wherein the handle is shaped like the grip portion of a racket.

11. The sport-specific training and conditioning device according to claim 10 wherein the grip is shaped like the grip portion of a tennis racket.

12. The sport specific training and conditioning device according to claim 2 wherein the handle is shaped like the grip portion of a golf club.

13. The sport specific training and conditioning device according to claim 2 wherein the handle is shaped like the grip portion of a hockey stick.

14. The sport specific training and conditioning device according to claim 2 wherein the handle is less than about 10 inches long.

15. A sport specific training and conditioning device for a sport using a handheld implement having a grip portion, the device comprising a handle shaped like the grip portion of the implement, the handle having first and second ends and being less than about 10 inches long, and a weight on the second end of the handle, the center of mass of the weight being less than about 13 inches from the first end of the handle.

16. The sport specific training and conditioning device according to claim 15 wherein the center of mass of the device is not located on the handle.

17. A method of training and conditioning for a sport that uses a hand held implement having a grip portion, the method comprising grasping a device comprising a handle shaped like the grip portion of the implement, the handle having first and second ends, and a weight on the second end of the handle, the center of mass of the device being less than about 13 inches from the first end of the handle, and swinging the device to train and condition the arms.